D.B.CIVIL SPECIAL APPEAL NO. 365/2007
Sadhu Ram v. Smt. Nathi Devi & ors.

Date of order : 04.04.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri C.P.Sharma for the appellant

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the order of the appellate court rejecting his application for amendment of the written statement at the appellate stage.

Facts of the case are that one Ghasi Ram filed a suit for eviction against the appellant on the grounds of default and personal necessity of his two sons, Heera Lal and Nawal Kishore. The suit was decreed in course of time on the ground of personal necessity. During pendency of the appeal which the appellant preferred Ghasi Ram died. The appellant filed application stating that Ghasi Ram had executed a registered will in favour of his wife and two sons, Pooran Chand and Heera Lal to the exclusion of Nawal Kishore. According to the appellant, on the death of Ghasi Ram personal necessity of Nawal Kishore vanished by reason of will under which he was not given any share in the property.

As regards Heera Lal, it is said that he used to look after the shop of Ghasi Ram at Sidhodhi Bazar and after death of Ghasi Ram he has become owner of the shop and therefore as regards him also the ground of personal necessity does not subsist.

We find no substance in the case of the appellant. The question as to whether in view of the will Nawal Kishore can claim the premises in question may arise in a dispute inter se among brothers. The appellant being tenant cannot take that plea. The will no doubt came into force on the death of Ghasi Ram but we do not think it would affect the decree. The decree was passed on the basis of evidence on record and the appellate court has to consider whether the decree is sustainable or not. As regards Heera Lal, even if he was looking after the business of Ghasi Ram in the shop at Sidhodhi Bazar, it would not dilute plaintiff's case of personal necessity which has been decreed by the trial court. We do not think in the circumstances the trial court committed error in rejecting the prayer for amendment.

Appeal is dismissed.

mathur/ (MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.